

Message Text

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ACTION IO-14

INFO OCT-01 EUR-12 ISO-00 EB-08 AID-05 L-03 FRB-03
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TO SECSTATE WASHDC 0654
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AMEMBASSY LONDON
AMEMBASSY MOSCOW
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USMISSION USBERLIN
USMISSION GENEVA
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C O N F I D E N T I A L SECTION 01 OF 04 BONN 13285

E.O. 11652: GDS
TAGS: PGOV, UNIDO, UNCTAD, WB, GW, US, UR, UK, FR
SUBJECT: UNIDO REFERS SOVIET PROTEST ON GERMAN
FOUNDATION FOR INTERNATIONAL DEVELOPMENT TO
UN LEGAL COUNSEL

REFS: (A) VIENNA 6531 (NOTAL)
(B) VIENNA 6531 (NOTAL)
(C) 76 BONN 05461 (NOTAL)
(D) 76 BONN A-176 (NOTAL)
(E) BONN 04739 (NOTAL)
(F) 76 BONN 19515 (NOTAL)

BEGIN SUMMARY: SOVIETS HAVE AGAIN PROTESTED TO
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UNIDO ABOUT ITS PARTICIPATION IN THE SEMINAR ON
TECHNOLOGY TRANSFER OF THE GERMAN FOUNDATION FOR
INTERNATIONAL DEVELOPMENT (DSE). UNSATISFIED BY
UNIDO'S REPLY TO THEIR FIRST PROTEST OF JULY 11 (REF A),
THE SOVIETS ASSERT IN THEIR NEW NOTE THAT NEITHER
ANY UN ORGANS NOR THEIR OFFICIALS ARE ENTITLED TO DETER-
MINE WHAT INTERNATIONAL MEETINGS AND UNDER WHICH CIR-

CUMSTANCES SHOULD BE HELD IN WEST BERLIN. SINCE UNIDO BASED ITS REPLY TO THE FIRST SOVIET NOTE ON A 1972 DECISION OF THE UN LEGAL COUNSEL, IT HAS REFERRED THE MATTER TO THAT OFFICE FOR CONFIRMATION OF THE UN POSITION. THE FRG HAS ASKED ALLIED BONN GROUP REPS TO INFORM THEIR UN MISSIONS OF THIS DEVELOPMENT IN ORDER TO BE PREPARED FOR POSSIBLE INQUIRIES BY THE UN LEGAL COUNSEL. ACTION REQUESTED: THAT THE DEPARTMENT AUTHORIZE USUN TO MAKE USE OF THE BACKGROUND PROVIDED BELOW SHOULD THE UN SEEK THE MISSION'S ADVICE IN CONNECTION WITH THE UN'S ANSWER TO THE UNIDO REQUEST. END SUMMARY

1. REGARDING THE RECENT SOVIET AND GDR PROTESTS, FRG BONN GROUP REPS HAVE PROVIDED INFORMATION WHICH EXTENDS THE CHRONOLOGY OF EVENTS PRESENTED IN REF A, PARA 2. THE GDR PROTEST OF JULY 11 (REF B) STATED THAT "WHETHER AN INTERNATIONAL EVENT MAY BE HELD IN WEST BERLIN OR NOT IS IN ANY INDIVIDUAL CASE SUBJECT TO AN EXAMINATION AS TO WHICH EXTENT THE ABOVE-MENTIONED CONDITIONS HAVE BEEN COMPLIED WITH TO BE MADE BY THE PARTIES TO THE RESPECTIVE AGREEMENTS". THIS ARGUMENT WAS NOT REFLECTED IN THE SOVIET JULY 11 NOTE (PARA 9 INFRA), WHICH ATTACKED THE DSE AS "A FEDERAL AGENCY OF THE FEDERAL REPUBLIC OF GERMANY ILLEGALLY LOCATED IN WEST BERLIN".
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2. UNIDO REPORTEDLY REPLIED TO THE SOVIETS IN A JULY 13 NOTE, THE TEXT OF WHICH WE DO NOT HAVE, ALONG THE LINES OF ITS ANSWER TO THE GDR NOTE (REF B, PARA 3). THE SOVIET MISSION THEN RESPONDED WITH A SECOND NOTE TO UNIDO (TEXT PARA 10 INFRA), ALLEGING THAT NO UN ORGANS ARE COMPETENT TO DECIDE WHAT INTER-

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C O N F I D E N T I A L SECTION 02 OF 04 BONN 13285

NATIONAL MEETINGS MAY BE HELD IN WEST BERLIN AND
THAT MEETINGS ORGANIZED BY THE DSE IN WEST BERLIN
"CONTRADICT THE QA AND ARE THEREFORE ILLEGAL".

3. AS REPORTED IN REF A, THE UNIDO REPLIES TO THE
FIRST SOVIET NOTE AND THE GDR NOTE WERE BASED ON A
1972 DECISION BY THE UN LEGAL COUNSEL THAT, ON THE
BASIS OF THE QA, UNIDO IS ENTITLED TO PARTICIPATE IN
MEETINGS ORGANIZED BY THE DSE AND HELD IN WEST BERLIN.
FRG BONN GROUP REP (WEGENER) REPORTED AT THE AUGUST
3 BONN GROUP MEETING THAT KHANE HAD THUS
DECIDED TO REFER THE PROBLEM PRESENTED BY THE SOVIET
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NOTES TO UN LEGAL COUNSEL SUY FOR A CONFIRMATION OF
THE UN POSITION ON PARTICIPATION IN DSE ACTIVITIES.

4. WEGENER SUGGESTED THAT THE ALLIED REPS SHOULD
INFORM THEIR UN MISSIONS OF THIS DEVELOPMENT IN
ORDER THAT THE LATTER CAN BE PREPARED FOR POSSIBLE
INQUIRIES BY THE UN LEGAL COUNSEL. FOR TACTICAL
REASONS, HOWEVER, THE FRG WOULD PREFER THAT THE
ALLIED MISSIONS NOT TAKE THE INITIATIVE TO APPROACH
THE UN LEGAL COUNSEL ON THIS MATTER.

5. COMMENT: EMBASSY DOES NOT EXPECT THE UN LEGAL

COUNSEL WILL EXPERIENCE GREAT DIFFICULTY IN RESPONDING TO THE SOVIET COMPLAINTS. THIS IS ONLY THE MOST RECENT IN A SERIES OF SOVIET AND EAST EUROPEAN ATTACKS ON UN PARTICIPATION IN DSE ACTIVITIES, WHICH, SO FAR, HAVE BEEN CONSISTENTLY REJECTED BY THE UN (REF C).
END COMMENT

6. WE ARE UNABLE TO FIND THE 1972 OPINION RENDERED BY THE UN LEGAL COUNSEL, WHICH IS CITED BY UNIDO, BUT NOTE THAT IN TWO ANALAGOUS DSE CASES INVOLVING GDR AND SOVIET PROTESTS IN 1976--AN INTERREGIONAL SEMINAR ON GOVERNMENT AUDITING PROCEDURES (REF C) AND AN INTERNATIONAL SEMINAR ON THE DEVELOPMENT AND MANAGEMENT OF COASTAL WATER RESOURCES--SUY RULED THAT UN PARTICIPATION WAS LEGAL. THESE PROTESTS DEALT NOT ONLY WITH THE LEGALITY OF THE LOCATION OF THE DSE IN WEST BERLIN BUT ALSO WITH THE INVITATION PROCEDURES USED. IN THE COASTAL WATERS CASE, SUY CONFIDENTIALLY GAVE THE FRG DELEGATION THE TEXT OF HIS REPLY TO THE SOVIETS. IN THIS HE ARGUED AS FOLLOWS:

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"THE SEMINAR IN QUESTION IS BEING HELD IN BERLIN (WEST), PURSUANT TO A JOINT INVITATION EXTENDED TO THE UNITED NATIONS BY THE SENAT OF BERLIN AND BY THE FEDERAL REPUBLIC OF GERMANY IN ACCORDANCE WITH THE QUADRIPARTITE AGREEMENT OF 3 SEPTEMBER 1971, ESPECIALLY ANNEX IV, B, 2(C) AND (D). IN LINE WITH PREVIOUS PRECEDENTS, THIS JOINT INVITATION WAS ACCEPTED, AND THE NECESSARY ARRANGEMENTS WERE ENTERED INTO FOR THE HOLDING OF THE SEMINAR THROUGH AN EXCHANGE OF NOTES WITH THE FEDERAL REPUBLIC OF GERMANY. THE GERMAN FOUNDATION FOR INTERNATIONAL DEVELOPMENT HAS MADE CERTAIN MEETINGS AND OTHER FACILITIES AVAILABLE ALONG THE LINES OF SIMILAR FACILITIES PROVIDED BY THIS INSTITUTION FOR UNITED STATES SEMINARS PREVIOUSLY HELD IN BERLIN (WEST) WITHOUT PROTEST. IN THIS CONNECTION, IT IS CLEAR THAT THE SECRETARIAT IS NOT IN A POSITION TO DETERMINE THE STATUS OF THE FOUNDATION UNDER NATIONAL LAW, A MATTER JUST NOW RAISED WITH THE SECRETARIAT, NOR IS THE SECRETARIAT COMPETENT TO OTHERWISE INTERPRET THE QUADRIPARTITE AGREEMENT OF 3 SEPTEMBER 1971, THIS RIGHT BEING CONFINED TO THE PARTIES CONCERNED.

IN THE CIRCUMSTANCES JUST DESCRIBED, AND PURSUANT TO THE SEMINAR AGREEMENT ENTERED INTO, THE SECRETARIAT IS PROCEEDING WITH THE SEMINAR..."

7. COMMENT: ALTHOUGH 98 PERCENT OF DSE'S FUNDING COMES FROM THE FEDERAL BUDGET, IT IS LEGALLY A PRIVATE ENTITY (SEE REF D FOR BACKGROUND ON THE ORGANIZATION). WE ARE INFORMED THAT THE DSE IS NEITHER AN FRG AGENCY NOR FRG-CONTROLLED. THE ALLIED POSITION IS THAT ITS LOCATION IN WEST BERLIN IS IN NO WAY ILLEGAL. ALTHOUGH THE DSE IS A PRIVATE FOUNDATION, NOT AN FRG AGENCY, IT IS WORTH NOTING THAT THE ALLIED POSITION IS THAT NO FRG AGENCIES OR OFFICES NOW IN BERLIN ARE LOCATED
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THERE IN VIOLATION OF THE QA (REF E, PARA 5(A)).

8. THE ALLIED POSITION ON UN PARTICIPATION IN DSE

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TO SECSTATE WASHDC 0656
INFO USMISSION USUN NEW YORK
AMEMBASSY VIENNA
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ACTIVITIES MAY ALSO BE DEDUCED FROM THE PROJECT PAPER ON BERLIN WHICH THE ALLIES RECENTLY USED TO BRIEF A NUMBER OF FOREIGN GOVERNMENTS ON CERTAIN ASPECTS OF THE LEGAL AND POLITICAL SITUATION OF THE CITY (REF F).

ACCORDING TO ANNEX 3(C):

BEGIN QUOTE.

THE QUADRIPARTITE AGREEMENT CONFIRMS THAT, PROVIDED THAT MATTERS OF SECURITY AND STATUS ARE NOT AFFECTED, MEETINGS OF INTERNATIONAL ORGANIZATIONS AND INTERNATIONAL CONFERENCES AS WELL AS EXHIBITIONS WITH INTERNATIONAL PARTICIPATION MAY BE HELD IN THE WESTERN SECTORS OF BERLIN.

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AS IS ALSO STATED IN THE QUADRIPARTITE AGREEMENT, INVITATIONS FOR SUCH EVENTS WILL BE ISSUED BY THE SENAT OF BERLIN OR JOINTLY BY THE FEDERAL REPUBLIC OF GERMANY AND THE SENAT. WHEN NON-GOVERNMENTAL INSTITUTIONS, SUCH AS SPORTS ORGANIZATIONS OR THE FOUNDATION FOR INTERNATIONAL DEVELOPMENT, ORGANIZE EVENTS WITH INTERNATIONAL PARTICIPATION IN THE WESTERN SECTORS OF BERLIN IT IS FOR THOSE INSTITUTIONS ONLY -- AS IS NORMAL PRACTICE -- TO DECIDE ON THE INVITATIONS PROCEDURE TO ADOPT: THE PROVISION OF THE QUADRIPARTITE AGREEMENT WHICH DEALS WITH MODALITIES FOR ISSUING INVITATIONS DOES NOT IMPOSE AN OBLIGATION ON THE SENAT OR ON THE SENAT AND THE FEDERAL GOVERNMENT JOINTLY TO ISSUE INVITATIONS TO INTERNATIONAL EVENTS WHICH ARE NOT ORGANIZED BY OFFICIAL BODIES.

END QUOTE.

THUS, ACCORDING TO THE ALLIED INTERPRETATION OF THE QA, JOINT INVITATIONS BY THE SENAT AND FRG NEED NOT BE SENT TO INTERNATIONAL PARTICIPANTS IN DSE ACTIVITIES. HOWEVER, IT APPEARS TO HAVE BEEN THE PRACTICE OF DSE, AS IN THE PRESENT CASE, TO HAVE JOINT INVITATIONS ISSUED. THE UN, IN REPLYING TO THE SOVIET NOTE REGARDING THE AUDIT SEMINAR, MADE NOTE OF THIS FACT.

9. FOLLOWING IS TEXT OF SOVIET NOTE OF JULY 11, 1977 TO UNIDO.

BEGIN TEXT

THE PERMANENT MISSION OF THE USSR TO THE INTERNATIONAL ORGANIZATIONS IN VIENNA HAS LEARNED THAT A

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SEMINAR FOR DEVELOPING COUNTRIES ON THE SUBJECT OF ASSISTANCE THROUGH THE TRANSFER OF TECHNOLOGY IS TO BE ORGANIZED UNDER UNCTAD AUSPICES IN WEST BERLIN DURING JULY 1977, AND THAT AT THE SUGGESTION OF THE FEDERAL REPUBLIC OF GERMANY, THE "GERMAN FOUNDATION FOR INTERNATIONAL DEVELOPMENT" HAS BECOME DIRECTLY INVOLVED IN THE PREPARATIONS FOR THIS MEETING. UNIDO IS AMONG A NUMBER OF ORGANIZATIONS THAT HAVE BEEN INVITED TO TAKE PART IN THIS SEMINAR.

IN THIS CONNECTION, THE SOVIET UNION WISHES TO DRAW ATTENTION TO THE FACT THE "GERMAN FOUNDATION FOR INTERNATIONAL DEVELOPMENT" IS A FEDERAL AGENCY OF THE FEDERAL REPUBLIC OF GERMANY ILLEGALLY LOCATED IN WEST BERLIN. ITS PRESENCE AND ACTIVITIES IN THAT CITY ARE IN OBVIOUS CONTRADICTION TO THE FOUR-POWER AGREEMENT ON WEST BERLIN OF 3 SEPTEMBER 1971, ACCORDING TO WHICH WEST BERLIN IS NOT AN INTEGRAL PART OF THE FEDERAL REPUBLIC OF GERMANY AND IS NOT GOVERNED BY IT. IT IS QUITE CLEAR THAT THE INVOLVE-

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MENT OF THE FOUNDATION
IN THE ORGANIZATION OF THIS SEMINAR CAN ONLY
BE REGARDED AS THE LATEST ATTEMPT BY THE FEDERAL
REPUBLIC OF GERMANY TO ACHIEVE, THROUGH THE ABUSE OF
UNCTAD'S AUTHORITY, LEGAL RECOGNITION OF ITS FEDERAL
AGENCIES LOCATED IN WEST BERLIN FOR THE PURPOSE OF
REASSERTING ITS ILLEGAL CLAIMS TO THAT CITY.

THE PERMANENT MISSION OF THE SOVIET UNION TO
THE INTERNATIONAL ORGANIZATIONS IN VIENNA EXPRESSES
THE HOPE THAT THE UNIDO SECRETARIAT WILL TAKE A POSI-
TION IN FAVOR OF THE STRICT OBSERVANCE OF THE PRINCI-
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PLES OF INTERNATIONAL LAW IN THE INTERESTS OF INTER-
NATIONAL COOPERATION WITHIN THE UNITED NATIONS, AND
WILL NOT ALLOW ITSELF TO BECOME ASSOCIATED WITH
ACTIONS THAT HAVE NOTHING IN COMMON WITH UNIDO'S
OBJECTIVES AND TASKS AND RUN COUNTER TO THE FOUR-POWER
AGREEMENT ON WEST BERLIN OF 3 SEPTEMBER 1971.

THE PERMANENT MISSION OF THE USSR TO THE INTER-
NATIONAL ORGANIZATION IN VIENNA TAKES THIS OPPORTUNITY
TO RENEW TO UNIDO THE ASSURANCE OF ITS HIGHEST CON-
SIDERATION.

END TEXT

10. FOLLOWING IS THE TEXT OF THE JULY 19 SOVIET NOTE
TO UNIDO.

BEGIN TEXT

THE PERMANENT MISSION OF THE UNION OF SOVIET
SOCIALIST REPUBLICS TO THE INTERNATIONAL ORGANIZATIONS
IN VIENNA PRESENTS ITS COMPLIMENTS TO THE EXECUTIVE
DIRECTOR OF THE UNITED NATIONS INDUSTRIAL DEVELOPMENT
ORGANIZATION AND HAS THE HONOR TO STATE THAT THE ANSWER
OF THE SECRETARIAT OF UNIDO MADE IN ITS NOTE OF 13

JULY 1977, REFERENCE NO. ID 131'1 GFR, TO OUR STATE-
MENT OF 11 JULY 1977, REFERENCE NO. 156, CONCERNING
THE INVITATION EXTENDED TO UNIDO BY THE GERMAN
FOUNDATION FOR INTERNATIONAL DEVELOPMENT TO PARTICI-
PATE IN A SEMINAR ON THE TRANSFER OF TECHNOLOGY IN
WEST BERLIN, CANNOT BE ACCEPTED BY US AS SATISFACTORY
EITHER IN SUBSTANCE OR FROM VIEWPOINT OF THE ARGUMEN-
TATION USED THERE.

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NEITHER ANY UN ORGANS NOR THEIR OFFICIALS ARE
ENTITLED TO DETERMINE WHAT INTERNATIONAL MEETINGS AND
UNDER WHICH CIRCUMSTANCES SHOULD BE HELD IN WEST
BERLIN. THE CRITERIA TO BE APPLIED HERE IS THE
QUADRIpartite AGREEMENT OF 3 SEPTEMBER 1971, WHICH
GOVERNS THE PROCEDURES AND CONDITIONS FOR INTERNATIONAL
MEETINGS ORGANIZED IN WEST BERLIN. MEETINGS ORGANIZED
IN THAT CITY UNDER AEGIS OF "THE GERMAN FOUNDATION FOR
INTERNATIONAL DEVELOPMENT" OF FRG CONTRADICT THE
QUADRIpartite AGREEMENT AND ARE THEREFORE ILLEGAL.

IN CONNECTION WITH THE ABOVE STATEMENTS THE USSR
PERMANENT MISSION TO THE INTERNATIONAL ORGANIZATIONS
IN VIENNA REITERATES ITS HOPE THAT THE UNIDO SECRE-
TARIAT WOULD COME OUT FOR STRICT OBSERVATION OF
INTERNATIONAL LAW PRINCIPLES IN THE INTEREST OF
INTERNATIONAL COOPERATION IN THE FRAMEWORK OF THE
UNITED NATIONS AND WOULD NOT ALLOW TO GET ITSELF
INVOLVED IN ACTIONS WHICH HAVE NOTHING IN COMMON WITH
THE AIMS AND TASKS FACED BY UNIDO, AND ARE IN CONTRA-
DICTION TO THE QUADRIpartite AGREEMENT OF 3 SEPTEMBER
1971.

THE USSR MISSION TO THE INTERNATIONAL ORGANIZA-
TIONS IN VIENNA USES THIS OPPORTUNITY TO EXPRESS ONCE
AGAIN THE ASSURANCE OF ITS HIGHEST CONSIDERATION.

END TEXT

11. ACTION REQUESTED: THAT THE DEPARTMENT AUTHORIZE
USUN TO MAKE USE OF THE FOREGOING SHOULD THE UN SEEK
THE MISSION'S ADVICE IN CONNECTION WITH THE UN'S
ANSWER TO THE UNIDO REQUEST.

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Message Attributes

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TAGS: PGOV, WB, GE, US, UR, UK, FR, UNIDO, UNCTAD
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